IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 8174 of 2007(W)

PETITIONER:

M/S.MOTOROLA INDIA (P) LTD.,
38/322,PULICKAL BUILDINGS,
KARSHAKA ROAD, KOCHI-682 016.

BY ADV. SRI.JOSEPH JERARD SAMSOM RODRIGUES

RESPONDENTS:
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1. **ASSISTANT .COMMISSIONER (WORKS CONTRACT)**
   O/O.THE DEPUTY COMMISSIONER,
   COMMERCIAL TAXES, ERNAKULAM.

2. **THE DEPUTY COMMISSIONER (APPEALS)-II,**
   COMMERCIAL TAXES, ERNAKULAM.

3. **INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, ERNKAULAM,
   KOCHI-682 030.

BY SR.GOVT.PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 8174 OF 2007-W

JUDGMENT

The petitioner attacks Ext.P7 interim order on various grounds. It submits, the order has been passed mechanically without adverting to any of the contentions raised by it. It is submitted that along with the revised return, the petitioner has submitted reconciliation statement. If the same was taken into account, the tax liability will come down on that count alone, by Rs.1,01,27,106/-. It is further pointed out that the labour charges should have been excluded from the taxable turnover, in view of Section 5C(1)(c) of the K.G.S.T.Act. If the labour charges were excluded, the tax will come down by a further amount of Rs.3,61,60,002/-. Even if the accounts are not properly maintained, the petitioner submits, it is entitled to a deduction of 30% of the contract amount. Further, tax was levied at 13.8%. In fact, it should have been at the rate of 8% plus 15% additional sales tax. On that ground alone, the quantum of tax went up by Rs.39,04,800/-. Though, all these contentions were raised before the appellate authority, the said authority has not adverted to them. So, the decision of the appellate authority is unsustainable, in the light of the decision of the Division Bench

of this Court in **Alok Spices v. Deputy Commissioner (Appeals) Agricultural Income Tax and Sales Tax, Ernakulam** [(1988)71 STC 347] and also the decision of the Apex Court in **Benara Valves Ltd. v. Commissioner of Central Excise** [2006(204) E.L.T. 513 (SC)], it is submitted. So, the petitioner prays for quashing Ext.P7 order and to grant absolute stay of recovery of the tax, pending disposal of the appeal.

2. I heard the learned Government Pleader for the respondents also. I feel that having regard to the nature of the contentions raised by the petitioner, the appellate authority should have dealt with them more fairly and objectively. Going by the principles laid down by this Court in **Alok Spices** (supra), Ext.P7 order cannot be sustained. Accordingly, it is quashed. Ext.P8 stay application produced along with I.A.3882/2007 is remitted for fresh consideration by the appellate authority in accordance with law, after affording an opportunity of being heard to the petitioner within two weeks from the date of production of a copy of this judgment. The recovery proceedings pursuant to the impugned assessment will be kept

in abeyance for a period of one month from today.

The Writ Petition is disposed of as above.

14th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/